

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

GERDA ETIENNEFILS	:	
	:	
v.	:	C.A. No. 06-360S
	:	
LINDA S. McMAHON, Acting	:	
Commissioner of Social Security	:	

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

This matter is before the Court on the request of Plaintiff Gerda Etienneffils (“Plaintiff”) for judicial review of the decision of the Commissioner of Social Security (“the Commissioner”), denying Plaintiff’s application for Supplemental Security Income (“SSI”) and Social Security Disability Insurance (“SSDI”) benefits under Titles II and XVI of the Social Security Act (“the Act”). On January 31, 2007, Defendant Linda S. McMahon (“Defendant”), in lieu of answering Plaintiff’s Complaint, filed a Motion for Entry of Judgment Under Sentence Four of 42 U.S.C. § 405(g) with Reversal and Remand of the case for further proceedings. (Document No. 3).

This matter has been referred for preliminary review, findings and recommended disposition. 28 U.S.C. § 636(b)(1)(B); LR Cv 72(a). For the reasons explained herein, I recommend that Defendant’s Motion be GRANTED and the matter remanded to the Commissioner for further administrative proceedings.

Facts and Travel

Plaintiff is a forty-seven year old woman. (Compl. ¶ 10). Plaintiff alleges physical and mental disability as a result of back and leg pain related to spine surgery and arthritis. Id., ¶ 9.

Plaintiff filed applications for SSI and SSDI, which were denied initially and on reconsideration. (Id., ¶ 4). Plaintiff then filed a timely request for a hearing before an administrative law judge (“ALJ”), which was held in Providence, Rhode Island. Id., ¶ 5. On September 9, 2004, the ALJ issued an unfavorable decision, which Plaintiff appealed to the Appeals Council. Id., ¶¶ 6-7. On June 6, 2006, the Appeals Council denied Plaintiff’s request for review, thereby rendering the ALJ’s decision the final decision of the Commissioner. Id., ¶ 7.

Plaintiff filed a Complaint in this Court on August 8, 2006. On January 31, 2007, Defendant’s Motion for Remand Under Sentence Four of 42 U.S.C. § 405(g) was filed.

Discussion

According to sentence four of Section 405(g), 42 U.S.C., “[t]he court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.” 42 U.S.C. § 405(g). Following further consideration by the Appeals Council, Defendant requests that her final decision be reversed and that the case be remanded to an ALJ for additional administrative development so that the ALJ can (1) properly address the issue of Plaintiff’s capacity for work prior to surgery in November 2001 and during her convalescence from surgery; (2) assess medical improvement, if applicable; and (3) if necessary, seek the assistance of a medical expert(s) who can address the severity and effects of Plaintiff’s asserted physical and mental impairments. After reviewing Plaintiff’s Complaint and Defendant’s Motion to Remand, this Court agrees that remand is warranted and so recommends.

Conclusion

For the foregoing reasons, I recommend that the Defendant's Motion for Entry of Judgment Under Sentence Four (Document No. 3) be GRANTED. I further recommend that the District Court enter Final Judgment for Plaintiff reversing the decision of the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) and remanding the matter for further administrative proceedings as described above. Any objections to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten (10) days of its receipt. See Fed. R. Civ. P. 72(b); D.R.I. Local R. 32. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and of the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
February 1, 2007